

SHARTSIS FRIESE LLP
ONE MARITIME PLAZA
EIGHTEENTH FLOOR
SAN FRANCISCO, CA 94111

SHARTSIS FRIESE LLP
JAMES P. MARTIN (Bar #170044)
jmartin@sflaw.com
FELICIA A. DRAPER (Bar #242668)
fdraper@sflaw.com
SIMONE M. KATZ-O'NEILL (Bar #246490)
skatz@sflaw.com
One Maritime Plaza, Eighteenth Floor
San Francisco, CA 94111
Telephone: (415) 421-6500
Facsimile: (415) 421-2922

Attorneys for Plaintiff
TUCK BECKSTOFFER WINES LLC and
Counterdefendants CHALKBOARD
DISTRIBUTORS, LLC AND JAY KAPLAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

TUCK BECKSTOFFER WINES LLC, a
California limited liability company,

Plaintiff,

v.

ULTIMATE DISTRIBUTORS, INC., a
Georgia corporation,

Defendant.

ULTIMATE DISTRIBUTORS, INC., a
Georgia corporation,

Counterclaimant,

v.

CHALKBOARD DISTRIBUTORS, LLC
dba GEORGIA PRIME WINE & SPIRITS,
a Georgia limited liability company, and
JAY KAPLAN, an individual,

Counterdefendants.

Case No. CV09-3881 PJH

**STIPULATION AND ~~PROPOSED~~
ORDER RE: DISMISSAL WITH
PREJUDICE OF TUCK BECKSTOFFER
WINES LLC'S COMPLAINT AGAINST
ULTIMATE DISTRIBUTORS, INC.**

Trial Date: June 20, 2011
Complaint Filed: July 29, 2009

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, Plaintiff Tuck Beckstoffer Wines LLC ("TB Wines"), Defendant, Counterclaimant and Counterdefendant Ultimate Distributors, Inc. ("Ultimate"), and Counterdefendants and Counterclaimants Chalkboard Distributors, LLC dba Georgia Prime Wine & Spirits ("Chalkboard") and Jay Kaplan ("Kaplan") by and through their respective counsel, hereby submit this Stipulation and Proposed Order to the Court:

RECITALS

WHEREAS, on July 29, 2009, TB Wines filed a Complaint against Ultimate in the Superior Court of California in and for the County of Napa;

WHEREAS, on August 24, 2009, Ultimate filed a Notice of Removal;

WHEREAS, on September 21, 2009, Ultimate filed its Answer and Counterclaims against TB Wines, Chalkboard, and Kaplan;

WHEREAS, on October 30, 2009, Chalkboard and Kaplan filed their Answer and Counterclaims against Ultimate;

WHEREAS, on January 22, 2010, the Court issued an Order granting the Motion to Strike the First, Fourth, Fifth, Sixth and Seventh Counterclaims of Ultimate Pursuant to the Anti-SLAPP Statute (C.C.P. § 425.16) brought by TB Wines, Chalkboard and Kaplan;

WHEREAS, on February 4, 2010, Ultimate filed a Notice of Voluntary Dismissal, dismissing its remaining counterclaim against TB Wines without prejudice;

WHEREAS, TB Wines and Ultimate have entered into a Settlement Agreement and have agreed that TB Wines' Complaint against Ultimate and Ultimate's Counterclaims against TB Wines shall be dismissed with prejudice; and

WHEREAS, Ultimate, Chalkboard and Kaplan have not settled their disputes related to this case.

STIPULATION

NOW THEREFORE, based upon the foregoing, the parties stipulate as follows:

1. TB Wines' Complaint against Ultimate shall be dismissed with prejudice.
2. Such dismissal shall have no effect on the Counterclaims asserted by Ultimate

1 against Chalkboard and Kaplan, or the Counterclaims asserted by Chalkboard and Kaplan against
2 Ultimate, all of which remain pending in this action.

3
4
5 DATED: May 21, 2010 Respectfully submitted,
6 SHARTSIS FRIESE LLP

7 By: /s/ James P. Martin
8 JAMES P. MARTIN

9 Attorneys for Plaintiff
10 TUCK BECKSTOFFER WINES LLC and
11 Counterdefendants CHALKBOARD
12 DISTRIBUTORS, LLC AND JAY KAPLAN

13
14 DATED: May 21, 2010 CONKLE, KREMER & ENGEL
15 Professional Law Corporation

16 By: /s/ William C. Conkle
17 WILLIAM C. CONKLE

18 Attorneys for Defendant, Counterclaimant
19 and Counterdefendant ULTIMATE
20 DISTRIBUTORS, INC.

21
22 DATED: May 21, 2010 GLASPY & GLASPY

23 By: /s/ Paul Glaspay
24 PAUL GLASPY

25 Attorneys for Defendant, Counterclaimant
26 and Counterdefendant ULTIMATE
27 DISTRIBUTORS, INC.
28

1 DATED: May 21, 2010

3 By: /s/Lawrence Allen Rosenbluth

4 LAWRENCE ALLEN ROSENBLUTH

5 Attorneys for Counterdefendants and
6 Counterclaimants
7 CHALKBOARD DISTRIBUTORS, LLC dba
8 GEORGIA PRIME WINE & SPIRITS and
9 JAY KAPLAN

10 **ORDER**

11 PURSUANT TO STIPULATION, AND FOR GOOD CAUSE SHOWN, IT IS SO
12 ORDERED.

13 DATED: 5/26/10

14 HONORABLE JUDGE PHYLLIS J. HAMILTON
15 DISTRICT COURT OF THE UNITED STATES
16 NORTH OF CALIFORNIA



SHARTSIS FRIESE LLP
ONE MARITIME PLAZA
EIGHTEENTH FLOOR
SAN FRANCISCO, CA 94111

ECF CERTIFICATION

I, JAMES P. MARTIN, am the ECF User whose identification and password are being used to file this STIPULATION AND [PROPOSED] ORDER RE: DISMISSAL WITH PREJUDICE OF TUCK BECKSTOFFER WINES LLC'S COMPLAINT AGAINST ULTIMATE DISTRIBUTORS, INC.. In compliance with General Order 45.X.B, I hereby attest that WILLIAM C. CONKLE, PAUL GLASPY and LAWRENCE ROSENBLUTH have concurred in this filing.

DATED: May 21, 2010

SHARTSIS FRIESE LLP

By: /s/ James P. Martin

JAMES P. MARTIN

Attorneys for Plaintiff
TUCK BECKSTOFFER WINES LLC and
Counterdefendants CHALKBOARD
DISTRIBUTORS, LLC AND JAY KAPLAN

6787\004\1651773.2

SHARTSIS FRIESE LLP
ONE MARITIME PLAZA
EIGHTEENTH FLOOR
SAN FRANCISCO, CA 94111